HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.5157 OF 2005

Between:

Gurram Narsireddy

. . .Petitioner

AND

Transmission Corporation of
A.P. Limited and others

. . .Respondents

:: ORDER ::

Counsel for the petitioner : Shri D.V.Nagarjuna Babu

Counsel for the respondents : Shri O.Manohar Reddy

Dated: 29th August, 2007

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In this petition, the petitioner has prayed for quashing notice dated 15.12.2004 issued by Prescribed Authority under Section 6 of the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 (for short 'the 1984 Act').

The petitioner claims to have purchased a small rice mill from Shri T.Ramulu of Juglakpalli Village, Pochampalli Mandal, Nalgonda District in 1985 and shifted the same to Dhothigudem Village, which is the hamlet of Juglakpalli Gram Panchayat, along with L.T. Service Connection bearing No.336. He operated the mill for about 12 years and then discontinued the manufacturing activity. The supply of power to the mill is also said to have been disconnected on 03.2.1998. After six years, the petitioner received letter dated 19.2.2004 issued by Additional Assistant Engineer, Electrical Operation, Bhudan Pochampally addressed to his father Shri G.Chandra Reddy for payment of Rs.1,67,559/- against connection bearing No.336 with a threat that if the amount is not paid, link service connection bearing No.162 will be disconnected without further notice. However, no action was taken in furtherance of that notice and after a gap of ten months, the prescribed authority issued notice under Section 6 of the 1984 Act read with Rule 4(1) of the Rules framed thereof requiring the petitioner to deposit a sum of Rs.1,67,559/- towards arrears of electricity in respect of Service Connection No.336.

The petitioner has questioned the impugned notice mainly on the ground of violation of the provisions of the Act and the rules of natural

justice. In paragraphs 5 and 6 of his affidavit, the petitioner has averred as under:

> "5. I submit that to our surprise we have received communication in Letter No.AAE/C/B.P.Pally(T)/D.No.27/01, dated 19-2-2004 from the 3rd respondent informing that our disconnected service i.e. S.C.No.336 is in the premises of an existing service i.e., Service Connection No.162 and an amount of Rs.1,67,559/- is payable in respect of the Service Connection No.336. He requested us to clear the said arrears and obtain restoration of power supply in respect of service connection bearing No.336 as otherwise, threatened to disconnect our existing service connection bearing No.162. In this connection, it is pertinent to submit that service connection bearing No.162 is a domestic service obtained in respect of our house. After receipt of the same, we have approached the 3rd respondent in person and explained to him that our service was disconnected long back and there are no arrears whatsoever in respect of the service connection No.336 and due to the mistake, the above mentioned notice must have been issued. Afterwads, the 3rd respondent closed the matter. Thereafter, once again the 4th respondent herein issued notice No.1234/2004 dated 15-12-2004 under Form-A by informing that a sum of Rs.1,67,559/- is due from us by way of electricity charges/minimum charges as per the Agreement/Terms and Conditions of Supply notified by the Board/other charges as per the statement of account connected thereto. He requested us to pay the said amount in full settlement within 15 days as otherwise threatened to recover the said amount under the provisions of the A.P. State Electricity Board (Recovery of Dues) Act, 1984.
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> 6. I submit that the action of the respondents in issuing the notices dated 9-2-2004 and 15-12-2004 is highly illegal, arbitrary, unjust and void for the reason firstly that there are no arrears payable in respect of our service connection and therefore, our agreement was terminated as long back in the year 1998 and service connection was also dismantled in the same year and secondly that even assuming that there were arrears payable by us, the respondents cannot recover the said arrears from us under law at this length of time, inasmuch as, as of now there is no subsisting contract between myself and the respondents, which enables the respondents to take any action for recovery of the alleged arrears. Further the respondents cannot raise any demand

as of now as the same is barred by limitation. The courts have taken the view that in a case like this a claim must be made within a period of three years from the date on which the said amount fell due. Beyond the period of three years, the claims cannot be entertained."

Notice of the writ petition was served on the respondents some time in 2005, but counter has not been filed. Therefore, adjudication of the issue raised in the petition will have to be made by presuming that whatever has been stated in the affidavit of the petitioner is correct.

I have heard Shri D.V.Nagarjuna Babu, learned counsel for the petitioner and Shri O.Manohar Reddy, learned counsel for the respondents.

Sections 3, 4 and 6 of the 1984 Act, which have bearing on the decision of this case read as under:

"**3. Bills to state the date by which payments are to be made and consequences of non-payment:-** (1) Every bill for dues payable to the Board by a debtor shall be in the prescribed form and shall specify conspicuously the amount of dues and the date by which such dues or to be paid.

(2) If the dues are not paid by such date, the debtor shall be liable to pay in addition thereto such penalty as may be prescribed; and such dues and penalty shall be recoverable along with the costs incurred in making such recovery, in the manner hereinafter laid down in this Act.

4. Notice of demand for dues and penalty not paid:- Where the dues are not paid by the debtor by the date specified in the bill therefor, the prescribed authority may, at any time, serve or cause to be served upon the debtor or his authorized representative, a notice of demand in the prescribed form, stating the name of the debtor, the amount payable by him on account of the dues, the penalty and the costs of recovery.

Explanation:- The sending of the notice by registered post either in the name of the debtor or of authorized representative to the last known address shall be deemed to be a sufficient service upon the person concerned.

> **6. Recovery of dues, etc., if not paid:-** (1) If the aggregate amount of the dues, penalty and costs mentioned in the notice of demand served under Section 4 is not deposited with the prescribed authority within three months of the date of such service or such extended period as the prescribed authority may, from time to time, allow, the debtor shall be deemed to be in default in respect of such amount and the same shall be recoverable as if it were an arrear of land revenue, notwithstanding anything to the contrary contained in any other law for the time being in force, or any instrument or agreement having the force of law.
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> (2) For the purpose of such recovery, the prescribed authority may forward to the Collector having jurisdiction, a certificate under his signature in the prescribed form stating the amount and details of the demand and the name and description of the debtor in default, and the Collector shall on receipt of such certificate, proceed to recover from the debtor the amount of the demand as if it were an arrear of land revenue."

A conjoint reading of the above reproduced provisions makes it clear that a notice of demand envisaged under Section 4 of the 1984 Act can be issued only if the bill is served on the consumer in terms of Section 3, if he is not paid within the specified time. To put it differently, issue of bill requiring the consumer to pay the dues is sine qua non for issue of demand notice in terms of Section 4. If the consumer fails to pay the bill issued in terms of Section 3 or comply with the demand issued in terms of Section 4, then and then only action under Section 6 of the 1984 Act can be taken.

In the present case, no bill is shown to have been issued to the petitioner requiring him to pay the arrears of electricity amounting to Rs.1,67,559/- in relation to Service Connection No.336. Therefore, the action of the prescribed authority to issue demand notice will have to be treated as ultra vires the provisions of Section 4 of the 1984 Act.

The threat held out by the prescribed authority to disconnect the power supply to Service Connection bearing No.162 is also liable to

be nullified because communication dated 19.2.2004 and demand notice dated 15.12.2004 are conspicuously silent on the issue of prior intimation having been given to the petitioner about the arrears of electricity in relation to Service Connection No.336, which stood in the name of his father. In any case, no punitive action can be taken against him on the ground of non-deposit of the alleged arrears in relation to Service Connection No.336.

In the result, the writ petition is allowed. The impugned demand notice is quashed and the respondents are restrained from giving effect to the same. However, it is made clear that this order will not preclude the competent authority from taking action in accordance with law for recovery of the arrears of electrical dues, if any, in relation to Service Connection No.336. It is also made clear that if any action is taken by the concerned authorities for recovery of the so-called dues of electricity in relation to Service Connection No.336, then the petitioner shall be free to raise all legally permissible objections and also avail appropriate legal remedy.

As a sequel to disposal of the main petition in the manner indicated above, WPMP No.6852 of 2005 filed by the petitioner for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

29th August, 2007

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